

# HOUSE . . . . . No. 745

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By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to elective shares of surviving husbands or wives. The Judiciary.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Five.

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AN ACT RELATIVE TO SPOUSAL ELECTIVE SHARE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The General Laws, as appearing in the 2002 Official Edition,  
2 are hereby amended by inserting after chapter 191B the following  
3 new chapter:—

4 **CHAPTER 191C.**  
5 **[ELECTIVE SHARE OF SURVIVING HUSBAND OR WIFE]**

6 Section 1. [Definitions.]

7 As used in this chapter the following words shall, unless the  
8 context otherwise requires, have the following meanings:—

9 “Decedent’s nonprobate transfers to others,” means the types of  
10 transfers specifically included in the elective estate under section  
11 five.

12 “Fractional interest in property held in joint tenancy with the  
13 right of survivorship,” whether the fractional interest is unilaterally  
14 severable or not, means the fraction, the numerator of which  
15 is one and the denominator of which, if the decedent was a joint  
16 tenant, is one plus the number of joint tenants who survive the  
17 decedent and which, if the decedent was not a joint tenant, is the  
18 number of joint tenants.

19 “Marriage,” as it relates to a transfer by the decedent during  
20 marriage, means any marriage of the decedent to the decedent’s  
21 surviving spouse.

22 “Nonadverse party” means a person who does not have a sub-  
23 stantial beneficial interest in the trust or other property arrange-  
24 ment that would be adversely affected by the exercise or  
25 nonexercise of the power that he [or she] possesses respecting the  
26 trust or other property arrangement. A person having a general  
27 power of appointment over property is deemed to have a benefi-  
28 cial interest in the property.

29 “Power” or “power of appointment” includes a power to desig-  
30 nate the beneficiary of a beneficiary designation.

31 “Presently exercisable general power of appointment” means a  
32 power of appointment under which, at the time in question, the  
33 decedent, whether or not he [or she] then had the capacity to exer-  
34 cise the power, held a power to create a present or future interest  
35 in himself [or herself], his [or her] creditors, his [or her] estate, or  
36 creditors of his [or her] estate, and includes a power to revoke or  
37 invade the principal of a trust or other property arrangement.

38 “Probate estate” means property that would pass by intestate  
39 succession if the decedent dies without a valid will.

40 “Property” includes values subject to a beneficiary designation.

41 “Right to income” includes a right to payments under a com-  
42 mercial or private annuity, an annuity trust, a unitrust, or a similar  
43 arrangement.

44 “Transfer,” as it relates to a transfer by or of the decedent,  
45 includes (A) an exercise or release of a presently exercisable  
46 general power of appointment held by the decedent, and (B) an  
47 exercise, release, or lapse of a general power of appointment that  
48 the decedent, created in himself [or herself].

49 “Transfers by a testamentary substitute” means those nonpro-  
50 bate transfers of the type specifically included in the elective  
51 estate by the provisions of section five.

52 “Surviving husband or wife” A person who was married to the  
53 decedent at the time of his or her death.

54 Section 2. [Elective Share — Relinquishment of Election.]

55 (a) The surviving husband or wife of a person who dies domi-  
56 ciled in Massachusetts may elect, under the limitations and condi-  
57 tions stated in this chapter, to claim the value of such portion of  
58 the elective estate of the deceased spouse as he or she is given  
59 under this chapter in lieu of any provisions that may have been

60 made in a will for him or for her and any provisions under the  
61 intestacy laws for him or for her and any provisions that may have  
62 been made for him or for her in any testamentary substitute  
63 included in the elective estate. The election provided by this  
64 chapter is subject to the provisions of section thirty-six of chapter  
65 two hundred and nine. The right, if any, of the surviving husband  
66 or wife of a person who dies domiciled outside this common-  
67 wealth to take an elective share in property in this commonwealth  
68 is governed by the law of the decedent's domicile at death.

69 (b) Spouses are entitled to opt out of the provisions of this  
70 chapter by relinquishing the election provided by this chapter. A  
71 spouse, by a writing subscribed by said spouse, may relinquish the  
72 election granted by this chapter as to the entire elective estate or a  
73 portion thereof or as to any particular property. A relinquishment  
74 is effective, in accordance with its terms, whether executed before  
75 or after the marriage of the spouses; whether executed before, on  
76 or after the effective date of this chapter; whether unilateral in  
77 form, executed only by the maker thereof, or bilateral in form,  
78 executed by both spouses; whether absolute or conditional;  
79 whether executed with or without consideration; and whether exe-  
80 cuted during the lifetime of the other spouse or after his or her  
81 death.

82 (c) Language that relinquish, renounce, waive, release,  
83 abandon, or disclaim all rights in the estate of the other spouse, or  
84 substantially equivalent language, is a relinquishment of election  
85 against any property included in the elective estate under this  
86 chapter. Language that relinquish, renounce, waive, release,  
87 abandon, or disclaim rights under a particular will or testamentary  
88 substitute or an interest in particular property, or substantially  
89 equivalent language, is a relinquishment only of the particular  
90 rights or property identified therein with reasonable particularity.

91 (d) A relinquishment executed after the effective date of this  
92 chapter is sufficient if in writing and subscribed by the maker  
93 thereof, acknowledged before a notary public in form and content  
94 substantially as follows:

95 This form gives up important legal rights. If not understood,  
96 consult a lawyer.

97 Relinquishment of Rights to Claim Share of Elective Estate  
98 Under G.L. c. 191 C.

99 As a married person I will have certain rights under Massachu-  
100 setts Laws Chapter 191 C to elect to take a share of my spouse's  
101 property after his or her death. I may claim this share even if my  
102 spouse does not want me to have it. I have been given an expla-  
103 nation of these rights or an opportunity to review my rights under  
104 Massachusetts law as fully as I desire. I have the right to consult  
105 a lawyer regarding my rights under Massachusetts law.

106 I have a right to know what property my spouse owns or has an  
107 interest in before signing this form. Knowing of this right, I have  
108 [initial one]:

109 [ ] reviewed a list of such property which is attached to this  
110 form as Exhibit A; or

111 [ ] intentionally decided to sign this form without full disclo-  
112 sure of the property owned by my spouse, knowing I will be  
113 bound by my signature even for property I know nothing about.

114 I have read the foregoing description of my rights, and have  
115 been given a full opportunity to seek whatever advice and counsel  
116 I desire, and I am signing this form voluntarily as my free act and  
117 deed.

118 I hereby relinquish, renounce, waive, release, abandon, dis-  
119 claim, and give up the following rights:

120 [initial only those categories you intend to apply]

121 [ ] All rights in the estate of my spouse that I may otherwise  
122 have under Mass. Gen. Laws Chapter 191 C.

123 [ ] Any rights I may have as to:

124 \_\_\_\_\_  
125 [here state the particular property, will, or testamentary substi-  
126 tute as to which rights are being given up]

127 [ ] I release my rights in return for the following promises or  
128 subject to the following conditions.

129 [here insert any conditions or limitations you wish to impose]

130 Signed under seal as a legally binding document.

131 DATE:

132

133

\_\_\_\_\_  
Signature

134 COMMONWEALTH OF MASSACHUSETTS

135 \_\_\_\_\_, ss. ( Date )

136

137 Then personally appeared the above-named

138 \_\_\_\_\_ and acknowledged the foregoing

139 instrument to be his/her free act and deed, before me.

140

141

\_\_\_\_\_  
Notary Public

142

My Commission Exp:

143

144 (d) Unless it provides to the contrary, an instrument of transfer  
145 to a third party executed by both spouses, or executed by one  
146 spouse and consented to in writing by the other spouse, is a relin-  
147 quishment of the election under this chapter by each spouse  
148 against the other in the property transferred.

149 (e) Unless it provides to the contrary, a valid written agreement  
150 that relinquishes, renounces, waives, releases, abandons, or dis-  
151 claims all rights in the property or estate of a present or prospec-  
152 tive spouse, or substantially equivalent language, or a complete  
153 property settlement entered into after or in anticipation of separa-  
154 tion or divorce is a relinquishment of the elective share under this  
155 chapter by each spouse in the property of the other.

156 (f) If the validity of a relinquishment, renunciation, waiver,  
157 release, disclaimer, or consent to transfer with respect to any prop-  
158 erty includible in the elective estate is or was governed by federal  
159 law or by the law of another jurisdiction, then a valid relinquish-  
160 ment, renunciation, waiver, release, disclaimer, or consent to  
161 transfer under such law shall be deemed an effective relinquish-  
162 ment of the election provided by this chapter.

163 Section 3. [Election Personal To Surviving Husband Or Wife.]

164 (a) [Surviving husband or wife must be living at time of elec-  
165 tion.] The election provided by this chapter is personal to the sur-  
166 viving husband or wife, may not be reached by creditors or sold,  
167 assigned, or transferred in any manner, other than a relinquish-  
168 ment as provided in section two of this chapter, and may only be  
169 made during the lifetime of the surviving husband or wife. In the  
170 case of a surviving husband or wife under conservatorship or  
171 guardianship, the election may be made by the duly appointed  
172 conservator or guardian of the surviving husband or wife only

173 with the approval of the probate court upon a substituted judgment  
174 standard. No surviving husband or wife or the conservator,  
175 guardian, or agent under a durable power of attorney of said sur-  
176 viving husband or wife shall be compelled to make an election  
177 under this chapter nor penalized, disadvantaged, or discriminated  
178 against by virtue of the relinquishment of or failure to make an  
179 election under this chapter. Relinquishment of election or failure  
180 to make an election shall not affect the eligibility of the surviving  
181 husband or wife for benefits or assistance under any governmental  
182 program.

183 (b) [Incapacitated Surviving Spouse.] If the election is exer-  
184 cised on behalf of a surviving spouse who is an incapacitated  
185 person, that portion of the elective share amounts due under  
186 section seven (b) must be placed in a custodial trust for the benefit  
187 of the surviving husband or wife under the provisions of chapter  
188 two hundred and three B, except as modified below. For the pur-  
189 poses of this subsection, an election on behalf of a surviving  
190 spouse by an authorized agent under a durable power of attorney  
191 is presumed to be on behalf of a surviving spouse who is an inca-  
192 pacitated person. For purposes of the custodial trust established  
193 by this subsection, (i) the electing guardian, conservator, or agent  
194 is the custodial trustee, (ii) the surviving spouse is the beneficiary,  
195 and (iii) the custodial trust is deemed to have been created by the  
196 decedent spouse by written transfer that takes effect at the dece-  
197 dent spouse's death and that directs the custodial trustee to admin-  
198 ister the custodial trust as for an incapacitated beneficiary.

199 (c) [Custodial Trust.] For the purposes of subsection (b) of this  
200 section, the chapter two hundred and three B shall be applied as if  
201 section six (b) thereof were repealed and sections two (e), nine  
202 (b), and seventeen (a) were amended to read as follows:

203 (1) Neither an incapacitated beneficiary nor anyone acting on  
204 behalf of an incapacitated beneficiary has a power to terminate the  
205 custodial trust; but if the beneficiary regains capacity, the benefi-  
206 ciary then acquires the power to terminate the custodial trust by  
207 delivering to the custodial trustee a writing signed by the benefi-  
208 ciary declaring the termination. If not previously terminated, the  
209 custodial trust terminates on the death of the beneficiary.

210 (2) If the beneficiary is incapacitated, the custodial trustee shall  
211 expend so much or all of the custodial trust property as the custo-

212 dial trustee considers advisable for the use and benefit of the ben-  
213 eficiary and individuals who were supported by the beneficiary  
214 when the beneficiary became incapacitated, or who are legally  
215 entitled to support by the beneficiary. Expenditures may be made  
216 in the manner, when and to the extent that the custodial trustee  
217 determines suitable and proper, without court order but with  
218 regard to other support, income, and property of the beneficiary  
219 and benefits of medical or other forms of assistance from any state  
220 or federal government or governmental agency for which the ben-  
221 eficiary must qualify on the basis of need.

222 (3) Upon the beneficiary's death, the custodial trustee shall  
223 transfer the unexpended custodial trust property in the following  
224 order: (i) to or as directed by the person who would have taken  
225 under the disposition originally made by the beneficiary's prede-  
226 ceased spouse against whom the elective share was taken; or  
227 (ii) under the residuary clause, if any, of the will of the beneficia-  
228 ry's predeceased spouse against whom the elective share was  
229 taken, as if that predeceased spouse died immediately after the  
230 beneficiary; or (iii) to that predeceased spouse's heirs.

231 Section 4. [Amount of Elective Share.]

232 (a) Except as otherwise provided in paragraphs (c), (d) and (e)  
233 of this section, if the deceased left issue, the surviving husband or  
234 wife shall take absolutely an amount equal to the value of one-  
235 third of so much of the elective estate as does not exceed one mil-  
236 lion dollars, and shall receive in addition to that amount only the  
237 income during his or her life on an amount equal to the value of  
238 one-third of the excess of the elective estate above one million  
239 dollars.

240 (b) Except as otherwise provided in paragraphs (c), (d) and (e)  
241 of this section, if the deceased left no issue, the surviving husband  
242 or wife shall take absolutely an amount equal to the greater of  
243 fifty thousand dollars or one-half of the value of so much of the  
244 elective estate as does not exceed one million dollars, and shall  
245 receive in addition to that amount only the income during his or  
246 her life on an amount equal to one-third of the excess of the elec-  
247 tive estate above one million dollars.

248 (c) Except for an election under paragraph (e) of this section, if  
249 the deceased person and the surviving husband or wife were mar-  
250 ried for less than fifteen years, then the surviving husband or wife

251 shall take the following percentage of the elective share amount  
252 otherwise provided under (a) or (b) of this section.

253 (1) If the decedent and the spouse were married to each other  
254 for one year or less, then sixteen percent of the elective share  
255 amount;

256 (2) for each additional year of marriage after the first, an addi-  
257 tional six percent of the elective share amount.

258 (3) For purposes of this section, the length of time the decedent  
259 and the surviving spouse were married to each other shall be the  
260 sum of the lengths of all of their marriages to each other.

261 (d) Except for an election under paragraph (e) of this section,  
262 an election under this chapter shall be further limited to no more  
263 than the amount necessary to bring the value of the property of the  
264 surviving husband or wife, after said election, to one-half the  
265 value of the combined property of the elective estate of the  
266 deceased spouse and the elective estate of the surviving husband  
267 or wife valued as if he or she had died contemporaneously with  
268 the deceased spouse.

269 (e) If at the time of death of the deceased spouse, divorce pro-  
270 ceedings were pending and the parties had executed a written  
271 property settlement or the court had entered judgment dividing  
272 their property which had not yet become final, the surviving hus-  
273 band or wife may elect to take thereunder, which shall become the  
274 elective share for purposes of this chapter.

275 (f) Except for an election under paragraph (e) of this section,  
276 the surviving husband's or wife's homestead allowance, exempt  
277 property, and family allowance, if any, are not charged against  
278 but are in addition to the elective share.

279 Section 5. [Property included in and excluded from the Elec-  
280 tive Estate.]

281 For purposes of this chapter, the elective estate includes:

282 (a) The decedent's probate estate, reduced by funeral and  
283 administration expenses, homestead allowance, family  
284 allowances, exempt property, and enforceable claims; and

285 (b) The decedent's transfers by testamentary substitute, con-  
286 sisting of the decedent's nonprobate transfers to others of any of  
287 the following types, in the amount provided respectively for each  
288 type of transfer.



289 (1) Property owned or owned in substance by the decedent  
290 immediately before death that passed outside probate at the dece-  
291 dent's death. Property included under this category includes:

292 (i) Property over which the decedent alone, immediately before  
293 death, held a presently exercisable general power of appointment.  
294 The amount included is the value of the property subject to the  
295 power, to the extent the property passed at the decedent's death,  
296 by exercise, release, lapse, in default, or otherwise, to or for the  
297 benefit of any person other than the decedent's estate or surviving  
298 husband or wife.

299 (ii) The decedent's fractional interest in property held by the  
300 decedent in joint tenancy with the right of survivorship. The  
301 amount included is the value of the decedent's fractional interest,  
302 to the extent the fractional interest passed by right of survivorship  
303 at the decedent's death to a surviving joint tenant other than the  
304 decedent's surviving husband or wife.

305 (iii) The decedent's ownership interest in property or accounts  
306 held in POD, TOD, or co-ownership registration with the right of  
307 survivorship. The amount included is the value of the decedent's  
308 ownership interest, to the extent the decedent's ownership interest  
309 passed at the decedent's death to or for the benefit of any person  
310 other than the decedent's estate or surviving husband or wife.

311 (2) Property transferred in any of the following forms by the  
312 decedent during marriage:

313 (i) Any irrevocable transfer in which the decedent retained the  
314 right to the possession or enjoyment of, or to the income from, the  
315 property if and to the extent the decedent's right terminated at or  
316 continued beyond the decedent's death. The amount included is  
317 the value of the fraction of the property to which the decedent's  
318 right related, to the extent the fraction of the property passed out-  
319 side probate to or for the benefit of any person other than the  
320 decedent's estate or surviving husband or wife.

321 (ii) Any transfer in which the decedent created a power over  
322 income or property, exercisable by the decedent alone or in con-  
323 junction with any other person, or exercisable by a nonadverse  
324 party, to or for the benefit of the decedent, creditors of the dece-  
325 dent, the decedent's estate, or creditors of the decedent's estate.  
326 The amount included with respect to a power over property is the  
327 value of the property subject to the power, and the amount

328 included with respect to a power over income is the value of the  
329 property that produces or produced the income, to the extent the  
330 power in either case was exercisable at the decedent's death to or  
331 for the benefit of any person other than the decedent's surviving  
332 spouse or to the extent the property passed at the decedent's death,  
333 by exercise, release, lapse, in default, or otherwise, to or for the  
334 benefit of any person other than the decedent's estate or surviving  
335 spouse. If the power is a power over both income and property  
336 and the preceding sentence produces different amounts, the  
337 amount included is the greater amount.

338 (3) Property that passed during marriage and during the one  
339 year period next preceding the decedent's death as a result of a  
340 transfer by the decedent if the transfer occurred after the filing of  
341 divorce or separation proceedings and in violation of a restraining  
342 order, injunction, or other order of the probate court restricting the  
343 transfer; and

344 (c) [Testamentary substitutes passing to surviving husband or  
345 wife] Excluding property passing to the surviving husband or wife  
346 under the federal social security system, the value of the elective  
347 estate includes the value of the decedent's transfers by testamen-  
348 tary substitute, consisting of nonprobate transfers to the dece-  
349 dent's surviving husband or wife, of the following types in the  
350 amount provided respectively for each type of transfer:

351 (1) the decedent's fractional interest in property held as a joint  
352 tenant with the right of survivorship, to the extent that the dece-  
353 dent's fractional interest passed to the surviving husband or wife  
354 as surviving joint tenant;

355 (2) the decedent's ownership interest in property or accounts  
356 held in co-ownership registration with the right of survivorship, to  
357 the extent the decedent's ownership interest passed to the sur-  
358 viving husband or wife as surviving co-owner; and

359 (3) all other property that would have been included in the elec-  
360 tive estate under paragraphs (b)(1) or (b)(2) or (b)(3) of this  
361 section had it passed to or for the benefit of a person other than  
362 the decedent's spouse, the decedent, or the decedent's creditors,  
363 estate, or estate creditors.

364 (d) The value of property included in the elective estate is  
365 reduced in each category by enforceable claims against the  
366 included property

367 (e) In case of overlapping application to the same property of  
368 the paragraphs or subparagraphs of this section including property  
369 in the elective estate, the property is included in the elective estate  
370 under the provision yielding the greatest value, and under only  
371 one overlapping provision if they all yield the same value.

372 (f) [Property excluded from Elective Estate.]

373 Notwithstanding any other provision of this chapter, the  
374 following are excluded from the elective estate:

375 (1) The value of any property is excluded from the decedent's  
376 transfers by testamentary substitute to the extent the decedent  
377 received adequate and full consideration in money or money's  
378 worth for a transfer of the property.

379 (2) The value of any property relinquished under section two of  
380 this chapter is excluded from the elective estate.

381 (3) the value of proceeds of life insurance not payable to the  
382 decedent's estate is excluded from the elective estate.

383 (4) The value of interests in community property arising under  
384 the community property laws of other states is excluded from the  
385 elective estate.

386 (5) The value of a principal residence transferred to or for the  
387 benefit of a decedent spouse's issue is excluded from the elective  
388 estate.

389 (6) The value of any property held in trust for the benefit of a  
390 disabled child or grandchild of the decedent spouse is excluded  
391 from the elective estate.

392 (7) The value of any property transferred by testamentary sub-  
393 stitute as defined in section five (b)(one) and (two) prior to the  
394 effective date of this chapter is excluded from the elective estate.

395 Section 6. [Proceedings for Elective Share; Time Limit].

396 (a) An election under this chapter shall be made by filing in the  
397 probate court a petition for the elective share within the earlier of  
398 nine months after the date of the decedent's death or six months  
399 after the surviving husband or wife receives notice of proceedings  
400 for probate of the decedent's will or administration of the de-  
401 cedent's estate. The surviving husband or wife may dismiss or with-  
402 draw his or her petition for an elective share, with prejudice, at  
403 any time before entry of a final determination by the court and the  
404 expiration of the time for appeal or, if an appeal is taken, at any  
405 time during the appeal or within ten days after rescript.

406 (b) If, after a will of the deceased is offered for probate, legal  
407 proceedings have been instituted wherein its validity or effect is  
408 drawn in question, the probate court may within six months, on  
409 petition and after such notice as it orders, extend the time for  
410 filing an election under this chapter for a reasonable time not to  
411 exceed six months from the termination of such proceedings.

412 (c) After the decedent's death and either before or after the  
413 filing of a petition for election under this chapter, a surviving hus-  
414 band or wife has the right to receive all material information  
415 regarding property that is or may be includible in the elective  
416 estate, within a reasonable time after his or her request for such  
417 information, from the personal representative of the decedent and  
418 from any person in possession or control of such property and  
419 from any person with an interest in such property, and if neces-  
420 sary, the surviving husband or wife may apply to the probate court  
421 for appropriate assistance in enforcing such right to information.

422 (d) Notice of the filing of the petition shall be given to persons  
423 interested in the estate and to persons whose interests may be  
424 adversely affected by the taking of the elective share. The pro-  
425 ceeding for determination of the elective share may be maintained  
426 against fewer than all persons against whom relief could be  
427 sought, but no person is subject to contribution in any greater  
428 amount than would have been the case if relief had been secured  
429 against all such persons.

430 (e) Upon application by the surviving husband or wife, the pro-  
431 bate court may allow attachments, trustee process, specific orders  
432 for equitable relief, and such other writs and orders as it deems  
433 meet and just to preserve property that is or may be includible in  
434 the elective estate.

435 (f) Upon application to the probate court after the death of the  
436 decedent by the personal representative or a surviving husband or  
437 wife or other person interested in the elective estate, the court may  
438 order that all or part of the property that is or may be includible in  
439 the elective estate be paid pendent lite to persons entitled thereto  
440 in amounts and subject to conditions consistent with this chapter.

441 (g) After notice and hearing, the court shall determine the  
442 amount of the elective share and shall order its payment as pro-  
443 vided in section seven of this chapter. If it appears that a fund or  
444 property included in the elective estate has not come into posses-

445 sion of the personal representative, or has been distributed by the  
446 personal representative, the court shall nevertheless fix the lia-  
447 bility of any person who has any interest in the fund or property or  
448 who has possession thereof, whether as trustee or otherwise.

449 (h) The orders or judgments of the probate court shall be  
450 enforceable in the same manner as other orders or judgments for  
451 the payment of money or for specific relief as to particular assets.  
452 Interest shall accrue from the date of judgment at twelve percent  
453 per annum.

454 (i) In addition to the powers conferred in section ten of chapter  
455 two hundred and eleven B, the chief justice for the probate and  
456 family court department may, from time to time, provide proce-  
457 dural forms and make general rules and issue standing orders in  
458 reference to practice and procedure as relates to the elective share  
459 of the surviving husband or wife, subject to the approval of the  
460 supreme judicial court.

461 Section 7. [Liability for Satisfaction of Elective Share. ]

462 (a) In a petition for the elective share under this chapter, there  
463 shall first be applied to satisfy the elective share amount and to  
464 reduce or eliminate any contributions due from others, property  
465 that passes or has passed or but for the election would have passed  
466 to the surviving husband or wife as a result of decedent's death.

467 (b) Except as otherwise provided in the will or an instrument  
468 governing a testamentary substitute, contribution to the remaining  
469 elective share amount to which the surviving spouse is entitled  
470 shall be made pro-rata in proportion to the value of their interests  
471 in the elective estate by the original recipients, beneficiaries, and  
472 distributees under the decedent's will, by intestacy, and by testa-  
473 mentary substitute, which contribution may be made in cash or in  
474 the specific property received from the decedent by the person  
475 required to make such contribution or partly in cash and partly in  
476 such property as such person in his or her discretion shall deter-  
477 mine.

478 (c) No original recipient who shall conform to the standard of a  
479 Massachusetts executor or administrator with respect to the care  
480 and management of assets included in the elective estate or who  
481 shall hold all such assets in the form in which such original recip-  
482 ient received them, shall be liable to the surviving spouse in an  
483 amount greater than the value of the elective estate assets received

484 by such original recipient, determined as of the date of distribu-  
485 tion or payment to the surviving husband or wife in satisfaction of  
486 such liability including interest, if any, under section six (g) of  
487 this chapter. No beneficiary shall be liable to the surviving spouse  
488 in an amount greater than the value of such beneficiary's share of  
489 the elective estate at the date of distribution or payment to the sur-  
490 viving husband or wife in satisfaction of such liability including  
491 interest, if any, under section six (g) of this chapter.

492 (d) [Protection of Subsequent Transferees]

493 A person, other than an original recipient, a beneficiary, or a  
494 payor, who receives an asset included in the elective estate,  
495 whether for value or as a gift, shall not be liable under this chapter  
496 for the value of the asset or any portion thereof, regardless of  
497 whether at the time such asset was received such person had  
498 notice of the surviving spouse's intention to file a petition for the  
499 elective share or notice that a petition for the elective share had  
500 been filed, unless the transfer to such person was a fraudulent  
501 transfer as to the surviving husband or wife.

502 Section 8. [Protection of Payors and Other Third Parties.]

503 (a) [Nonexistence of Liens or Encumbrances.]

504 The elective share of a surviving husband or wife under this  
505 chapter shall not be construed as imposing a lien or other encum-  
506 brance on any real or personal property, tangible or intangible,  
507 includible in the elective estate.

508 (b) A payor or other third party is not liable for having made a  
509 payment or transferred an item of property or other benefit to a  
510 beneficiary designated in a governing instrument, or for having  
511 taken any other action in good faith reliance on the validity of a  
512 governing instrument, upon request and satisfactory proof of the  
513 decedent's death, before the payor or other third party received  
514 written notice from the surviving spouse or the surviving spouse's  
515 representative that a petition for the elective share has been filed.  
516 A payor or other third party is liable for payments made or other  
517 actions taken after the payor or other third party received written  
518 notice that a petition for the elective share has been filed.

519 (c) A written notice that a petition for the elective share has  
520 been filed must be mailed to the payor's or other third party's  
521 main office or home by registered or certified mail, return receipt  
522 requested, or served upon the payor or other third party in the

523 same manner as a summons in a civil action. Upon receipt of  
524 written notice that a petition for the elective share has been filed,  
525 a payor or other third party may pay any amount owed to or with  
526 the court having jurisdiction of the probate proceedings relating to  
527 the decedent's estate, or if no proceedings have been commenced,  
528 to or with the probate court having jurisdiction of probate pro-  
529 ceedings relating to decedents' estates located in the county of the  
530 decedent's last known address. Subject to rule or regulation of the  
531 probate court with respect to acceptable and unacceptable prop-  
532 erty, or on motion with the approval of the probate court, and sub-  
533 ject further to such terms and conditions as the probate court may  
534 impose, a payor or other third party may transfer or deposit any  
535 item of property held by it to or with the court having jurisdiction  
536 of the probate proceedings relating to the decedent's death, or if  
537 no proceedings have been commenced, to or with the probate  
538 court having jurisdiction of probate proceedings relating to dece-  
539 dents' estates in the county of the decedent's last known address.  
540 The court shall hold the funds or item of property and, upon its  
541 determination of the elective share under this chapter, shall order  
542 disbursement in accordance with the determination. If the petition  
543 for an elective share is withdrawn or dismissed, the court shall  
544 order disbursement to the designated beneficiary. Payments or  
545 transfers to the court or deposits made into court discharge the  
546 payor or other third party from all claims for amounts so paid or  
547 the value of property so transferred or deposited.

548 The right of election provided under this chapter shall not  
549 create an interest, in any real or personal property of a spouse, nor  
550 create any lien or encumbrance on any real or personal property of  
551 a spouse, nor impair or impede or restrict in any way the right of a  
552 spouse to the ownership and free transferability of his or her prop-  
553 erty.

554 Section 9. [Real Estate.]

555 An election under this chapter shall not divest, encumber or  
556 have any operation or effect on any interest in real or personal  
557 property held by any third party.

558 Section 10. This act shall be effective for estates of persons  
559 dying on or after January one, two thousand and seven.